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IN THE

United States Court of Appeals

DISTRICT OF COLUMBIA

No. 9086.

LIBERTY MUTUAL INSURANCE COMPANY,
a Corporation, et al., *Appellants*,

v.

FRANK A. CARDILLO, Deputy Commissioner, U. S. Employees' Compensation Commission, et al., *Appellees*.

Appeal from the District Court of the United States for the District of Columbia.

JOINT APPENDIX.

I.

PLEADINGS, DOCKET ENTRIES AND OTHER PAPERS.

Filed Dec 13 1944

In the District Court of the United States for the District of Columbia

Civil Action 25249.

LIBERTY MUTUAL INSURANCE COMPANY, a corporation, 1909 Massachusetts Avenue, N. W., Washington, D. C., and E. C. ERNST, INC., a corporation, 1622 Fourteenth Street, N. W., Washington, D. C., *Plaintiffs*,

v.

FRANK A. CARDILLO, Deputy Commissioner, U. S. Employees' Compensation Commission, Washington, D. C., and VIRGINIA C. TICER, 317 Tennessee Avenue, N. E., Washington, D. C., *Defendants*.

Amended Bill of Complaint for Mandatory Injunction Under a Compensation Award.

To the Honorable Justices of the District Court of the United States for the District of Columbia, Holding an Equity Court:

The bill of complaint of the Liberty Mutual Insurance Company, a corporation, and E. C. Ernst, Inc., a corporation, through their attorneys, respectfully shows unto this Honorable Court:

1. That the Jurisdiction of the Court is based upon Title 33, U. S. Code, Sec. 921, and Title 36, District of Columbia Code, 1940 ed., Sec. 501.

2. That the plaintiff, Liberty Mutual Insurance Company, a corporation, is a duly organized company doing

business in the District of Columbia and brings this suit in its own right as compensation insurance carrier for plaintiff E. C. Ernst, Inc., as more fully hereinafter appears. Plaintiff E. C. Ernst, Inc., a corporation, is an electrical contractor with an office in the District of Columbia but doing the major part of its business elsewhere. It brings this suit in its own right as employer of Clarence H. Ticer, Jr., its deceased employee.

2 3. Defendant Frank A. Cardillo is Deputy Commissioner of the U. S. Employees' Compensation Commission, and is sued in his official capacity; defendant Virginia C. Ticer is a citizen of the United States and a resident of the District of Columbia, and the surviving widow of said Clarence H. Ticer, Jr.

4. A copy of the award of said Frank A. Cardillo, Deputy Commissioner, is attached hereto to be read as a part hereof. The transcript of the testimony adduced at the hearing is also made a part of this complaint.

5. That on December 13, 1943, Clarence H. Ticer, Jr. was driving northward along U. S. Route No. 1, returning to the District of Columbia after his day's work had been completed upon the Marine Base in Quantico, Virginia. He had been employed upon that project since Novembr of 1940. He was driving in his own automobile and bringing several fellow employees back to the Virginia-District of Columbia line. While nearing the main entrance to Fort Belvoir, Virginia, a large stone flew through the windshield of his car and struck him on the left side of the head, crushing his skull and causing such a severe injury that Ticer died four days later, December 17, 1943.

6. That thereafter defendant Virginia C. Ticer made a claim for compensation as the surviving widow under provisions of the Act of Congress approved May 17, 1928 entitled: "An Act to provide compensation for disability or death resulting from injury to employees in certain employments in the District of Columbia, and for other purposes." The employer and his carrier challenged the

application of this Act and the jurisdiction of the U. S. Employees' Compensation Commission; that it was shown by said employer and carrier, that Ticer had been engaged upon a major project in Virginia for a period of over three years; that during this time he reported daily to his work in Quantico and never at the Ernst Company's office in the District of Columbia; that all of the employment details, including the payment of salary, were consummated in the State of Virginia; that transportation was not supplied by the employer; that despite this evidence, and not in accordance with law, defendant Deputy Commissioner Cardillo in his award made the twenty-first day of July, 1944, found that the U. S. Employees' Compensation Commission had jurisdiction to determine the case.

3 7. That defendant Virginia C. Ticer claimed that the injury of her deceased husband arose out of and in the course of his employment, notwithstanding a showing that the injury occurred after Ticer had completed a day's work and sustained his injury while transporting several fellow employees to their homes in his own automobile, for which service he received payment; that said defendant Deputy Commissioner Cardillo in the award made the twenty-first day of July, 1944, found, without substantial evidence to support his conclusion, that the injury did arise out of and in the course of employment.

8. That said findings of fact and award followed a hearing before the Deputy Commissioner, at which hearing the substance of all of the facts hereinbefore related were clearly made known to the said Deputy Commissioner and made a part of his record of said hearing; that, in addition, it developed at said hearing that there was a contract in existence between the International Brotherhood of Electrical Workers, Local Union No. 26, and the Institute of Electrical Contractors, of which the plaintiff E. [illegible] Ernst, Inc. was a member, and that that contract provided among other things that "transportation and any necessary expenses, such as board and lodging, shall be furnished for

all work outside of the District of Columbia" (Rule 15, subparagraph (b)); that when a job is to be let the contractors call the Union and find out what additional compensation is to be paid to cover this provision of the contract by the contractor involved; that for many years employees working at Quantico, Virginia received $2.00 per day additional compensation; that it makes no difference where the prospective employee lives with relation to Quantico, the amount that he receives under this provision of the contract is the same whether he lives on the job, near the job, or a long distance from it; that the contract has no provision which determines what the employee shall do with the money that he receives under the aforesaid provisions of Rule 15(b) and that if he buys gasoline or anything else with that money that is the employee's own concern, and that if he doesn't use it for traveling expenses or is not required to use it for travelling expenses, he retains the money regardless; that the $2.00 paid to electrical workers at Quantico bore no direct relation to the amount expended by those employees in getting to and from the job; that it spite of such testimony said defendant Deputy Commissioner Cardillo in the award made on the twenty-first day of July, 1944, found "that the said transportation expense was paid in lieu of the employer supplying transportation."

4

9. That plaintiffs, in complying with said erroneous and illegal award, are paying to the defendant Virginia C. Ticer compensation at the rate of $13.12 per week and that your petitioners are without remedy save through the interposition of this Honorable Court.

WHEREFORE, the premises considered, your petitioners pray:

1. That the proceedings before said Deputy Commissioner be reviewed by this Honorable Court, including the record of evidence, and testimony taken at the formal hearing before him, together with the findings of fact and award.

2. That upon final hearing this Honorable Court may

enter a mandatory injunction permanently restraining said Frank A. Cardillo, Deputy Commissioner, and said Virginia C. Ticer, from enforcing payment of said award, and requiring defendant Frank A. Cardillo, Deputy Commissioner, to vacate and set aside said award and issue a new order denying compensation on the grounds which hereinbefore appear.

3. And for such other and further relief as to this Court may seem just and proper.

HOGAN & HARTSON

By Arthur J. Phelan,
Paul N. Shorb,
Attorneys for Plaintiffs
810 Colorado Building,
Washington, D. C.

Exhibit No. 1.

Filed Dec 13 1944

United States Employees' Compensation Commission
District of Columbia Compensation District

Compensation Order Award of Death Benefits
Case No. 991-78 Fatal

In the matter of the claim for compensation under the District of Columbia Workmen's Compensation Act
(Clarence H. Ticer, Jr., deceased employee)

MRS. VIRGINIA CATHERINE TICER, surviving wife, *Claimant*

v.

E. C. ERNST, INCORPORATED, *Employer*,

LIBERTY MUTUAL INSURANCE COMPANY, *Insurance Carrier*

Such investigation in respect to the above-entitled claim having been made as is considered necessary, and hearings having been duly held in conformity with law, the Deputy Commissioner makes the following

Findings of Fact.

That on December 13, 1943, Clarence H. Ticer, Jr., hereinafter referred to as "employee", was in the employ of the employer above named, whose address is 1622-24 Fourteenth Street, Northwest, Washington, District of Columbia; that the employer was subject to the provisions of an Act of Congress approved May 17, 1928, entitled "An act to provide compensation for disability or death resulting from injury to employees in certain employments in the District of Columbia, and for other purposes"; that the liability of the employer for compensation under the said Act was insured by the Liberty Mutual Insurance Company; that on the said day the employee herein had performed services as an electrician subforeman for the employer at Quantico Marine Base, Quantico, Virginia; that after completing his work and while driving his automobile en route from his place of work to his home in the District of Columbia along U. S. Route No. 1, and as he approached Fort Belvoir, Virginia, a large stone, which came from under the rear wheel of a passing truck, crashed through the windshield of his car, struck him on the head, crushed his skull, and
6 caused his death on December 17, 1943; that written notice of death was given to the employer within thirty days; that the employer furnished the employee with medical treatment in accordance with the provisions of Section 7 (a) of the Act; that the average annual earnings of the employee at the time of the injury amounted to $5,500; that in addition to his regular wages the employee received $2 per day from the employer as transportation allowance; that on the date of the injury the employer was carrying on employment in the District of Columbia as an electrical contractor and was engaged in electrical construction work in the District of Columbia as well as in the surrounding areas, including Virginia; that it maintained an office at 1622 Fourteenth Street, Northwest, Washington, District of Columbia; that the employee herein was an employee of

such employer; that he resided at 2505 Thirteenth Street, Northwest, Washington, District of Columbia; that he was an electrician and he was engaged in electrical construction for the employer at the Quantico Marine Base, Virginia; that the employee was hired by the employer in the District of Columbia; that he was a regular employee and had worked steadily for the employer for a period of approximately nine years, with the exception of a period of approximately six months in the year 1938 or 1939 when he worked for the United States Government; that in the year 1940 the employee worked for the employer as an electrician on a construction project at the Navy Yard Administration Building, Washington, District of Columbia; that in November of the said year, while so employed, he was transferred by the employer to the job in Quantico, Virginia; that the employee's employment in Quantico continued until the date of the injury; that approximately three months after commencing his work at Quantico the employee was made subforeman; that there was in effect an agreement between the electrical workers' union and the employer that "transportation and any necessary expense, such as board and lodging, shall be furnished for all work outside the District of Columbia"; that the sum of $2 per day was fixed by the parties to the said agreement as transportation expense and represented the approximate cost of travel from Washington, District of Columbia, to the Marine Barracks at Quantico, Virginia, and return; that the said sum was paid to the employee as transportation expense by the employer in addition to the regular hourly rate of pay; that the said transportation expense was paid in lieu of the employer's supplying transportation; that because the job site at Quantico was several miles away from the bus or train terminal it was necessary for the employee and his coworkers to drive their own automobiles to and from work; that a car pool was formed which included the employee herein; that each morning the

workers started from their homes in their own automobiles to a designated meeting place at Roaches Run, Virginia, from which point they would proceed in one car to the job site in Quantico; that the workers alternated in the use of the cars for that part of the trip; that the employer was aware of such means of transportation used by its employees and acquiesced therein; that on December 13, 1943, at the time the injury occurred, four coworkers were riding with the employee in the latter's car; that two of the said workers were not members of the car pool; that each worker, including the employee herein, received $2 from the employer as transportation expense; that non-members of the car pool paid the car owner $1 each for the round trip; that at the time of the injury the employee was travelling on a direct route from his place of employment to his home in Washington, District of Columbia; that the injury arose out of and in the course of the employment; that a claim for death benefits has been filed by Virginia Catherine Ticer as surviving wife of the employee; that the claim is within the jurisdiction of the District of Columbia Workmen's Compensation Act, and that the employer is liable for the payment of death benefits; that at the time of his death the employee had gone through three different marriage ceremonies; that the employee's first marriage to one Alice L. Williams was dissolved by a decree of divorce entered on August 27, 1930, by the Circuit Court for St. Mary's County, Maryland; that prior to the said divorce the employee on April 5, 1930, went through a marriage ceremony with one Hilda I. Figella in Media, Pennsylvania; that the latter relationship was dissolved by decree of divorce entered on May 1, 1942, by the Circuit Court of Fairfax County, Virginia; that on June 14, 1942, the employee married Virginia Catherine Ticer, the claimant herein, at Dillon, South Carolina; that thereafter they lived together as man and wife in the District of Columbia until the time of his death; that at such time the claimant was the surviving wife of the employee

and she is entitled to death benefits at the maximum rate of $13.125 per week; that funeral expenses of the deceased employee amounted to $705.80; that the total amount of such bill has been paid by the claimant, and she is entitled to reimbursement in the sum of $200; that the accrued death benefits payable to the claimant from December 17, 1943, to July 20, 1944, inclusive, are $406.87 (31 weeks at the rate of $13.125 per week); that nothing has been paid as death benefits.

Upon the foregoing findings of fact, the Deputy Commissioner makes the following

Award.

That the employer, E. C. Ernst, Incorporated, and the insurance carrier, Liberty Mutual Insurance Company, shall pay to Virginia Catherine Ticer, the claimant herein, death benefits as follows: 31 weeks at the rate of $13.125 per week, from December 17, 1943, to July 20, 1944, inclusive, amounting to $406.87, and shall continue payments thereafter in bi-weekly installments at the rate of $13.125 per week, subject to the limitations of the Act, or until otherwise ordered.

The employer and the insurance carrier shall also pay to the claimant the sum of $200 as funeral expenses.

A fee for legal services rendered the claimant in connection with this claim is approved in the sum of $200 in favor of Attorney Homer S. Carpenter, 1001 Fifteenth Street, Northwest, Washington, District of Columbia, same to be a lien upon and paid out of this award.

Given under my hand at Washington, D. C., this twenty-first day of July, 1944

(Sgd) FRANK A. CARDILLO
Deputy Commissioner
District of Columbia Compensation District

152 Filed Feb 19 1945

Motion to Dismiss Amended Complaint.

Now comes the defendant, Frank A. Cardillo, deputy commissioner, United States Employees' Compensation Commission, by his attorneys and moves this Honorable Court to dismiss the amended complaint for review of the compensation award filed herein for the following reasons:

1. That the amended complaint filed herein does not state a cause of action and does not entitle plaintiffs to any relief, nor does said amended complaint state a claim against defendant upon which relief can be granted.

2. That it appears from the amended complaint, including the transcripts of testimony taken before the deputy commissioner and made part of the complaint, that the findings of fact of the deputy commissioner in the compensation order filed by him on July 21, 1944, complained of in the complaint, are supported by evidence and under the law said findings of fact should be regarded as final and conclusive.

3. That the District of Columbia Workmen's Compensation Act of May 17, 1938 (D. C. Code (1940), title 36, chapt. 5, sec. 1) applies in respect to the injury of an em-

153 ployee of an employer carrying on any employment in the District of Columbia, irrespective of the place where the injury occurs, and as shown by the record, and findings thereon, the injury of said Clarence H. Ticer is within the purview of said Act.

4. That it appears from the amended complaint, including the transcripts of testimony, that the compensation order filed by the deputy commissioner on July 21, 1944, complained of by plaintiffs, is in all respects in accordance with law.

5. For such other good and sufficient reasons as may be shown.

EDWARD M. CURRAN,
United States Attorney
By D. Burch
DANIEL B. MAHER,
Assistant United States Attorney,
Attorneys for defendant Cardillo.

154 Filed Feb 19 1945

Motion to Dismiss Amended Complaint.

Now comes the defendant, Virginia C. Ticer, by her attorney, and moves this Honorable Court to dismiss the amended complaint for the reasons and upon the authorities cited in Motion to Dismiss Amended Complaint filed herein on behalf of defendant, Frank A. Cardillo, Deputy Commissioner, which motion, together with supporting memorandum of points and authorities, is hereby adopted by defendant Virginia C. Ticer.

HOMER S. CARPENTER,
1001 15th St. N. W.
Washington, D. C.
Attorney for Virginia C. Ticer,
defendant.

155 Filed Jun 11 1945

Order Granting Motion to Dismiss Complaint.

This action came on to be heard upon the motion of the defendants to dismiss the amended complaint and it appearing that the findings of the deputy commissioner in the compensation order complained of, are supported by evidence in the record and that said compensation order is in

all respects in accordance with law, it is this 11th day of June, 1945,

Ordered, Adjudged and Decreed that the motion to dismiss said amended complaint is hereby granted and the amended complaint filed herein be, and the same hereby is, dismissed.

DANIEL W. O'DONOGHUE,
Justice.

No objection as to form:
HOGAN & HARTSON
by ARTHUR J. PHELAN
Attorneys for Plaintiffs

II.

EXCERPTS FROM TESTIMONY AND PROCEEDINGS.

12 The Deputy Commissioner: On what ground is the claim controverted, Mr. Phelan?

Mr. Phelan: This claim is filed in the District of Columbia, and it is the contention of the carrier that this Commission has no jurisdiction over this claim. The accident happened in Virginia and the deceased employee had been working in Virginia for quite a period of time, and it is the position of the carrier that the Virginia Commission has jurisdiction.

Furthermore, as I understand it, this hearing is called solely for the purpose of determining the question of
13 jurisdiction. I don't know whether we should state our other grounds of controversion at this time.

The Deputy Commissioner: I think perhaps it would be better if you did.

Mr. Phelan: It is our contention, further, that this claim did not arise out of or in the course of employment; that this man was returning from his work at the time. He had finished his work at Quantico and was coming home from work with a car pool over which the employer had no control whatsoever.

That under the circumstances of the accident it didn't arise out of or in the course of his employment.

Our position further is that this claim would not be compensable under any circumstances under Virginia law, and we contend that the law of the place where the accident occurred should govern, irrespective of what the law in the District of Columbia might be.

Therefore, it is our position that even though you should find that this Commission has jurisdiction we still contend that under the facts and circumstances of this case that the accident did not arise out of or in the course of his employment within the purview of the Virginia decision, which we contend should govern in this case.

We further maintain that this widow is not a dependent widow within the meaning of the Act.

The Deputy Commissioner: It is not quite clear
14 to me as to what you mean by the application of the Virginia law. Even though we should find there is jurisdiction in the District of Columbia, the Virginia law should apply?

Mr. Phelan: Yes. In other words, it is the same thing, if the Court please, as to the question of negligence under the law. If an accident happens under circumstances that are recoverable in Virginia, it is the Virginia law that applies even though the suit is brought in the Courts of the District of Columbia.

. . . . . .

Our position is that despite the Compensation Act, it is the law of the place of the accident that should govern and should determine the question as to whether or not the accident arose out of or in the course of his employment.

. . . . . .

15 The Deputy Commissioner: Do your wish to make any statement in connection with the claim, as to what the contention of the claimant is?

Mr. Carpenter: It is the claimant's position that the jurisdiction of this matter is in the District of Columbia Workmen's Compensation Commission, pursuant to the provisions of the District of Columbia Code.

We deny that the law of the place of the accident would apply under these circumstances. If we are right in our contention that this Commission has jurisdiction, then this Commission must apply the appropriate statute under which it operates, and we believe it is a compensable injury.

Mr. Phelan: Our position with reference to that, if the Commissioner please, is that the procedural provisions of the District of Columbia Code would apply, but basically it must be the law of the place where the accident occurred that must govern.

Mr. Carpenter: I presume this could be handled more fully by brief, but I want to say this: That the Commission in this case has jurisdiction because the employer is a D. C. employer, conducting employment in the District of Columbia, and the employment of the deceased in this case arose in the District of Columbia.

16 The work site was in the State of Virginia, and the facts of the case as developed will show in addition to the wages paid to the deceased there was paid a stated sum each day for travelling expenses back and forth from the work site to his home in the District of Columbia.

The deceased and the claimant in this case are both residents of the District of Columbia, and the claimant still is. The statute governs the Commission and the provision of the statute must apply.

. . . . . .

17 **Clement F. Preller**

. . . . . .

By the Deputy Commissioner:

Q. State your full name. A. Clement F. Preller, 403 Eleventh Street, Northwest.

Direct Examination

By Mr. Carpenter:

Q. What is your position, Mr. Preller? A. I am business manager of the Electrical Workers Union

Q. What Electrical Workers Union is that? A. The Local known as Electrical Workers Local No. 26, International Brotherhood of Electrical Workers, which embraces Washington, Maryland, and Virginia.

Q. Where are the offices of the Union? A. 403 Eleventh Street, Northwest.

Q. What are your duties as business manager? A. Placing men on the job, seeing about labor relations on
18 the job, that there is proper relations between the contractor and the men, keeping down strikes and troubles on the job, and acting as a go between between the men and the contractor.

Q. Did you in the course of your duties have dealings with E. C. Ernst, Incorporated? A. Yes.

Q. What is the company? A. E. C. Ernst is an electrical concern here, who are in agreement with us, and we hire our men to the E. C. Ernst Company through an agreement.

Q. You say the E. C. Ernst Company is an electrical company here? A. In Washington; yes.

Q. You mean by that an office here? A. Yes; on Fourteenth Street, Northwest.

Q. Do you know that company and the work they perform? A. They perform electrical work of all nature, wiring buildings, apartment houses, power plants, and electrical work of any description.

Q. Do you know whether that company performed electrical work within the territorial limits of the District of Columbia? A. I do.

Q. State whether or not they do perform such work? A. I don't understand that.

19 Q. You stated that you did know whether they performed such work. A. They have performed millions of dollars worth of work in the District of Columbia and the surrounding area.

Q. State whether or not it is a fact that the E. C. Ernst Company has performed from time to time work at Quantico, Virginia. A. At the present time they are.

Q. What arrangement did you have with the E. C. Ernst Company for the hire of employees by that company? A. For the hiring?

Q. Yes, sir. A. They are hired through our office.

Q. It is a Union shop? A. It is a Union shop.

Q. Does your Union have a contract with the company? A. We have a contract with the Institute of Electrical Contractors, of which they are a member.

Q. Do you have a copy of such contract? A. Yes; that is a copy of the agreement (indicating).

I have the original here if you wish to examine it. It is the same as the agreement here but I cannot leave it here.

Mr. Carpenter: Would you like to look at it, Mr. Phelan?

Mr. Phelan: Yes.

By Mr. Carpenter:

Q. Does that contract provide for the wages of the employees of the company that belong to the Institute? A. It does.

Q. Does the E. C. Ernst Company belong to the Institute that is a party to this contract? A. They do.

Q. Does that contract provide for the payment of additional amounts to the employees of the members of the Institute hired through the local Union when they are working beyond the confines of the District? A. Yes; they receive extra compensation.

Mr. Phelan: I object to that. The contract speaks for itself.

Mr. Carpenter: I will introduce a copy of the contract. I am sure the contract will speak for itself.

The Deputy Commissioner: I will overrule the objection.

Mr. Phelan: The witness' answer is clearly contrary to the contract.

The Deputy Commissioner: I take it that the testimony of Mr. Preller is from his own knowledge of his own Union about the hire of employees through the Union.

The Witness: What was the question?

By Mr. Carpenter:

Q. Whether or not the contractor provided for the payment of additional sums to the members of the Electrical Workers Union No. 26? A. Carfare beyond the confines of the District of Columbia and if a man goes out of town, to stay out of town, it provides for their expenses to be paid.

Mr. Phelan: May I ask that he point that out in the contract at this time, if the Commissioner please?

The Deputy Commissioner: Wouldn't it be better to do that on cross-examination? You have the right to inquire.

The Witness: You have that in front of you, if you care to read it down there.

The Deputy Commissioner: Well, point it out. Let us save some time.

The Witness: Transportation and any necessary expense shall be provided on all jobs outside of the District of Columbia.

Transportation and any necessary expenses, such as board and lodging, shall be furnished for all work outside of the District of Columbia.

By Mr. Carpenter:

Q. You are reading from Rule 15, sub-paragraph (b)? A. That is right.

Mr. Phelan: My point is to get the language of the contract in the record.

The Deputy Commissioner: That will be introduced. We will have that in the record.

Mr. Carpenter: May I ask, Mr. Commissioner, that the copy of the contract be marked Exhibit No. 1?

The Deputy Commissioner: The printed copy in booklet form?

Mr. Carpenter: Yes.

Mr. Phelan: I have no objection.

The Deputy Commissioner: The Agreement between the Institute of Electrical Contractors of the District of Co-

lumbia and Local Union No. 26 of the International Brotherhood of Electrical Workers is received in evidence as Claimant's Exhibit No. 1.

Mr. Phelan: No objection.

By Mr. Carpenter:

Q. Did you know Clarence H. Ticer? A. I did.

Q. How long was he a member of the Local Union No. 26? A. Offhand, I would say, for the past fifteen years.

Q. Was he hired by the E. C. Ernst, Incorporated, pursuant to the provisions of the contract about which you have just testified? A. Yes.

Mr. Carpenter: You may examine.

Cross-Examination

By Mr. Phelan:

Q. Mr. Preller, will you read this please, Rule 15 (a) of the agreement that we have just been talking about? A. No travelling time shall be paid to workmen for travelling to or from any job in the jurisdiction of the Union when workmen are ordered to report to the job.

23

Q. In other words, pay time starts from the time they reach the job until they leave the job?

Mr. Carpenter: I object to that.

The Deputy Commissioner: The objection is overruled.

The Witness: The workmen are paid when they report to the job as the preceding article tells you, but they do receive compensation for going to and from jobs.

By Mr. Phelan:

Q. I am asking you if their pay time starts when they reach the job? A. That is right.

Q. And their pay time stops when they leave the job? A. Yes.

Q. And they are paid on an hourly basis? A. Yes, sir.

Q. What is the car fare to Quantico, Virginia? A. The amount that is allowed is two dollars a day for expenses, for travelling expenses.

Q. What is the car fare to Quantico, Virginia? A. I don't know. I don't know what runs down but the steam railroad, and I am not familiar with that.

24 Q. Are there any buses that go down there? A. I don't know.

Q. Well, you were the man who worked out this arrangement weren't you? A. We have been doing work at Quantico for the last eight years, and the men have received, always received two dollars a day expenses.

Q. They have always received two dollars a day expenses down there? A. That is right.

Q. What relation does that two dollars bear to their travelling expenses? A. I don't know that. That is the employment and the travelling expenses.

Q. But you don't know what the travelling expenses are? A. It would be around two dollars a day by going on the train.

Q. How much on the bus? A. I don't know whether there is a bus goes to Quantico or not.

Do you know?

Q. Yes, I know. A. I don't know whether the bus goes to Quantico.

Q. Let us analyze this section 15 (b) a little bit, a man taking a job, we will say, at Carderock, Maryland.

. . . . . .

25 The Witness: Transportation and necessary expenses. Whatever the transportation is to Carderock. I don't know what it is.

I think they receive a dollar a day to Carderock.

By Mr. Phelan:

Q. A dollar a day to Carderock? A. I am saying that from memory. I don't know. It is whatever the jobs are paid.

The contractor calls up to ask us what to figure for each job, and we find out the fare, train or bus, and we tell him to allow whatever it is as the case may be.

Q. Now, let us take to Cedar Point, Maryland. A. Two dollars a day.

Q. How can you get to Cedar Point on your two dollars a day? A. That is the tough part of it. The men have to use their own automobiles, and he is compensated to the extent of two dollars a day for the use of his own transportation.

Q. It cost more to get down there by public transportation. A. There is none down there that I know of.

26 Q. You can't get to Cedar Point by public transportation? A. I don't know; as far as I know.

You can go to Leonardtown on the bus and there may be a shuttle line, but that is the reason this clause was put in there, that the men would receive automobile money for the use of their automobile.

Q. Why isn't it worded they shall receive automobile money? A. We word that to the best of our ability, and it is worked out that they receive their travelling expenses.

Q. What I am bringing out is this: It bears no direct relation in the case whatever? A. We think it does.

Q. It bears no direct relation to the actual transportation cost; is that correct? A. We think it does.

Q. How does it cost a dollar to go back and forth to Carderock. That is not as far out as the Congressional Country Club, is it? A. I think it is past it. Carderock, Maryland, is beyond the Cabin John Bridge.

Q. It is not out as far as Great Falls, is it? A. Oh, no.

Q. Is it before you get to Great Falls? A. That

27 is the arrangement made before the jobs are set up, and all contractors pay the same.

They call us by phone and we find out about what the transportation is there, and if it is a dollar a day or fifteen cents a day—in some cases it is only twenty cents a day—and the job is paid under those arrangements.

Q. Let us assume that a man lives in Lorton, Virginia? He is under your jurisdiction, isn't he? A. That is right.

Q. And gets work, and you assign him to work at Quantico. What does he get? A. The same thing.

Q. He gets two dollars a day? A. Yes; he is working out of the Washington office, Washington, D. C.

Q. So that he gets two dollars transportation if he lives half way to Quantico? A. That is right.

Q. Let us assume a man, a member of your Union, lives in Quantico, and he works in Quantico on one of the jobs supervised by your Union. What does he get? A. If we have a man living in Quantico, he would receive two dollars a day.

Unfortunately, we don't have men living in Quantico. We are a Washington Union, and they mostly live in D. C. and the surrounding territory.

. . . . . .

28 Q. Let us assume a man did get a job, living in Washington, and got a job at Quantico, and he knew he was going to be there a long time on the job, and he moved his family down there to Quantico, in Quantico.

What would he get? A. Under our agreement he would receive the two dollars a day the same as the man who had to go back and forth.

Q. He would get the same thing? A. Absolutely.

Q. So that whether he travelled or whether he doesn't, he still gets his two dollars a day; is that correct? A. A man that lives on the job will receive two dollars; that is right.

. . . . . .

29 Q. When this work started at Quantico, you don't recall any determination or any investigation to determine what the transportation charge was, did you? A. Two dollars a day.

Q. Where does it cost two dollars? And what method of transportation? A. On the steam train.

Q. Two dollars on the steam train? A. Approximately; maybe a dollar ninety cents or something like that. They put the contract figure at two dollars, and they all figured the same way.

Q. That is an arbitrary figure fixed by the Union that all the contractors follow? A. That is correct.

Q. Now, in normal times when gasoline is plentiful, did the men still get their two dollars when they went down there? A. They have been getting that for the last ten years and before that.

Q. This contract is dated 1941. A. That contract runs from year to year, and there have been several changes in it. We usually renew that from year to year, and the body is practically the same for the last fifteen years.

Q. But that provision with reference to two dollars has been in force for some years? A. Not the two dollars, the clause reading transportation, travelling expenses and transportation.

Q. When did the two dollars go into effect? A. That was set up years ago. We have been doing work at Quantico for ten years, and they received two dollars despite the fact of the scarcity of gasoline, and they still receive two dollars.

Q. Now, Union requirements—the contract has no writing to determine what the employee shall do with the two dollars. A. No, if he buys gasoline or anything else, that is his own business.

Q. So that actually what this two dollars is is additional compensation for a man who was working at Quantico or Cedar Point? A. His travelling expenses.

Q. It is but if he doesn't use it for travelling expenses and he doesn't spend it for his travel, then it is additional compensation? A. I don't understand you.

If a man goes back and forth and he receives two dollars a day, now, hauling him down, back and forth, two dollars must be expended for wear and tear and the expenses.

Q. Assuming he is living down there. A. We don't assume that. Most of the men live in Washington.

If a man wants to move down there or live down there and come home on week-ends that is his prerogative.

The contractor doesn't care. He only pays him in conformity with the two dollars a day provided.

. . . . . .

32 Q. Now, Mr. Preller, we sent a subpoena over to the Union yesterday asking for any correspondence or papers relating to this contract. A. We have no correspondence. We do our business with the Institute of Electrical Contractors, of which the Ernst Company is a member.

Q. Is there any letter or contract in existence that you know of relating to this two dollars a day on this job, other than that contract? A. This is our agreement here.

Q. That is the agreement but, as I understand it,
33 any particular job—it is determined what all of the contractors shall put in for this requirement of rule 15 (b) under the contract.

Is that done by correspondence or just orally or by you? A. Orally or over the phone.

Q. It is just done orally over the phone? Never anything in writing about it? A. No.

Q. Why wouldn't you confirm it by letter? A. Why would we?

It has been the practice for the last fifteen years, and it has worked out perfectly on the transportation, no disagreements as to the amount of money paid.

If the Institute of Electrical Contractors are going to figure on a job, they call me and say, What would the wage be for a job two or three miles quite away from the bus, and if it is fifteen cents beyond the D. C. line, they all figure the same way.

Contractors from New York or Chicago ask and write us, and we send them a letter, and we say in that that the car fare is, whatever it will be, or if it is two dollars, and all contractors have an even chance to figure it.

Q. There is no requirement in your contract that the employer furnish transportation as such? A. Yes, there is; it says transportation.

34 Q. That is by bus, station wagon, or automobile?
A. No. It is up to the man to get that.

Q. It is up to the man to get there his own way? A. Yes; he is allowed transportation, so much for his transportation.

Mr. Phelan: That is all.

Redirect Examination

. . . . . .

Q. Therefore, if a man were living in Lorton, Virginia, and worked in Quantico, he would be paid the same amount of money, would he not for his transportation to Quantico and return? A. That is right.

. . . . . .

35 By the Deputy Commissioner:

Q. Mr. Preller, what is the reason for paying or allowing transportation to be paid to these men that work outside of the District? A. It works a hardship there on the man that has to go any distance and takes anywhere from an hour to an hour and a half of his time.

We feel he should get some extra compensation. We feel that the men should be compensated for their travelling expenses.

Q. You say that rule has been in effect for how many years? A. Ten or twelve years. I have been in this office for eleven years, and before that, twenty-five years that I know of. It has been in there as long as I have been in the Union, and I have been in the Union close to thirty years.

If I might go a little further. Here is a man living in Washington. There is work over at Dahlgren, Vir-

36 ginia, which takes a little time or he would have to stay there. A man should have some extra compensation for going down there and spending a whole week away and then only coming home on weekends. He should get extra compensation on that.

All he gets is two dollars a day for travelling expenses or it goes towards his board, which I don't think two dollars a day in these days will cover his board.

The same way at Cedar Point. They received two dollars a day there. Two dollars a day doesn't think about paying

a man's expenses there, but we told them two dollars a day when the job started, and we have to go through with it.

Q. To your knowledge, do these men form what is known as car pools? A. Oh, yes, sir.

Q. One of the employees owning a car will fill his car with other employees? A. If there is enough on the job, there will be four riding in one car, and lots of times there is only one or two men on the job. Sometimes one man has to come from one part of the city to another.

We can't regulate the men too much so a man might live in Maryland and will work in Virginia, or a man live in Maryland and might work in Virginia.

If a man has been with a contractor four years, he may live in Maryland and that contractor has work in
37 Maryland. In many cases a man will live in Maryland and will work in Virginia. It is pretty hard to arrange that, to break up the personnel of a man's shop to save travelling expenses, but we do it as much as possible, to cut down the travelling with the idea of conserving gasoline and tires, but it is impossible to go to that extent.

Q. It is not quite clear to me what the reason for that extra pay is.

I mean, for instance, as to whether it is to reimburse the man for the actual expense that he incurs in travelling to and from the place of employment, or if it is for the purpose of reimbursing him for the time consumed. A. A little of both. It is actually for the amount of time he uses in going to and from the job and is also—I don't think that with the way gas and automobiles are that a man is justified in going back and forth to Quantico for two dollars. He is actually losing money.

Q. If it were for the time consumed, wouldn't it be a lot more than two dollars? A. If he got it for the time, it would be two dollars an hour and that way it would be a lot more.

Q. Wouldn't you say it wasn't on that basis? A. It would be for his travelling expenses.

Q. Just the travelling expenses? A. It is. You might say two dollars a day for a man going to the job.

38 Q. Is that your definite statement that the reason for this extra pay or extra allowance made is for the actual expense which he would incur in going to and fro? A. That is actual expense, I would say, in going back and forth to the job.

The Deputy Commissioner: That is all.

Mr. Phelan: That is a conclusion of this witness as to his actual expense incurred while going back and forth to the job. It is not borne out by the witness' testimony concerning the facts.

The Deputy Commissioner: I will consider that.

. . . . . .

39 The Witness: Let us take Quantico, a man going back and forth from there. It was a time, some years ago, we didn't have bus transportation and they received two dollars a day and they had to go on the steam train.

Mr. Phelan: That is right.

The Witness: They received two dollars, and it has been pretty hard after a long standing established practice to get more money.

We have a tough time saying it would cost two and a half dollars, and the contractor would holler and he would not want to pay it, and for the last fifteen years they have been receiving two dollars.

Say a man would go on the bus, he would have to leave at four o'clock in the morning and spend the best part of his life travelling.

If you need men here today, now, skilled men, you
40 want to pay them forty cents less—the contractors would pay that man five dollars to get him on the job. They need skilled men now on the job. It is not a question of forty cents.

By Mr. Phelan:

Q. How do you know he would have to get up at four o'clock to get the bus? A. He would have to according to the bus schedule. They don't run them every hour.

Q. You don't know. A. They have to get up at five to go to the job in the automobile, and the bus would take longer, see?

. . . . . .

Q. You didn't investigate the bus schedule to find— A. (interposing) We don't need to investigate it.

. . . . . .

Q. The point I have in mind, Mr. Preller, is this: When buses started to go to Quantico, did you investigate to determine whether or not it would be advisable or feasible to change the arrangement and allow the men only the $1.60 that it would cost to go on the bus.

. . . . . .

41 A. I will answer "No."

We have received two dollars a day fo fifteen years. Now, we are not going to break up a practice that has been in existence for fifteen years to save forty cents and use up two hours of a man's time.

After all, here is what counts. We might sit around here and argue about forty cents, but skilled men is what we need to have in Quantico.

. . . . . .

42 Every contractor working at Quantico has allowed two dollars a day and that has been an established practice for fifteen years, regardless of whether the bus does it for a dollar and sixty cents. That is no concern of mine.

. . . . . .

Walter Charles Doe.

43 Direct Examination

By Mr. Carpenter:

Q. What is your position, Mr. Doe, with the Ernst Company? A. Vice President of E. C. Ernst, Incorporated, electrical contractors.

Q. Does E. C. Ernst, Incorporated, maintain an office in the District of Columbia? A. Yes.

Q. At what address? A. 1624 Fourteenth Street.

Q. What is the business of E. C. Ernst, Incorporated? A. General electric contractors.

Q. Electrical construction work? A. Yes, sir.

Q. Does E. C. Ernst Company do electrical construction work in the District of Columbia? A. Yes, sir.

Q. Are any jobs in progress now in the District of Columbia? A. Yes, sir.

44 The Deputy Commissioner: Are you trying to establish the residence of the deceased at the time of the accident?

45 The Witness: I don't think there is any question about that.

46 By Mr. Carpenter:

Q. Mr. Doe, when was Mr. Ticer hired by the E. C. Ernst Company? A. I should say about approximately ten years ago.

Q. He was hired through the electrical workers Union No. 26? A. That is right.

Q. Where was he hired? A. To work at that particular time.

Q. No. Where was the contract of employment made? A. Well, that I could not answer. That has been a long time ago, and what project he was to work on, that I could not tell you.

He was employed and worked on construction work, electrical construction work.

Q. Where was the contract of employment made? Where did you talk to him when you hired him? A. We always contact the Electrical Union, and they send us men.

47 Where did they send them? A. To our office or to the job. We would ask them to report to us.

Q. Your office is where? A. 1624 Fourteenth Street.

Q. I notice in your report that you made to the carrier under date of December 16, 1943, Mr. Doe, that you stated that Mr. Ticer was hired here in the District of Columbia, but he was to work and does work wherever he is needed on any of our jobs.

Isn't that a fact? A. Yes; he is hired to work on any job—any place I would want to put him.

Q. He was hired in the District of Columbia, wasn't he? A. Right; yes, sir.

Q. He would be subject to the orders then of the E. C. Ernst Company, or its officials, to report to work on a job within the District of Columbia or outside the District of Columbia, whichever the occasion might require; is that correct? A. That is correct.

. . . . . .

48 Q. And isn't it a fact that all of the men working
49 on the Quantico job live either within the territorial limits of the District of Columbia or in the suburbs immediately contiguous thereto? A. Yes; they all live within the District of Columbia or around it.

Q. Do they travel back and forth to the job site from their homes? A. I could not tell you that.

Q. Are they all paid two dollars a day in addition to their wages? A. Yes.

Q. To cover the cost of the transportation? A. They are.

. . . . . .

By Mr. Phelan:

Q. And those who lived in Virginia received the same amount as those that lived in the District of Columbia? A. That is right.

Q. And those that lived in Maryland received the same amount as those that lived in Virginia? A. That is right.

Q. In other words, you are told by the Union how much extra you must pay the men who are working at Quantico over and above the amount that those working in the
50 District of Columbia are to get; is that correct? A. That is correct.

* * * * * * * * * * *

Q. And you are told by the Union what amount you must pay, and as I understand it, all of the contractors agreed to accept that amount in their bid? A. That is correct.

Q. What is the practice that is followed in connection with the cost plus and fixed fee job—the same practice? A. We have always paid it, the transportation.

Q. You have always paid this additional amount? A. That is right.

Q. You didn't furnish transportation as such to any of the jobs? A. We have done it.

Q. You have done it in the past? A. Yes, sir.

Q. In cases where you have furnished transportation yourself is this additional allowance paid also? A. No.

By Mr. Carpenter:

51 Q. Is your answer "No"? A. Yes. We don't pay transportation when we furnish transportation to the men.

By Mr. Phelan:

Q. As I understand it, you undertake to exercise no jurisdiction at all or control on the method of transportation used by the various employees? A. No, sir; we have no control.

* * * * * * * * * * *

Q. Mr. Doe, do I understand that Mr. Ticer has been working for you for the last ten years? A. He has worked for us for the past ten years, but there was about six months that he went to work for the Federal Government.

. . . . . .

Q. Aside from the period that he worked for the Government of six months, he has been a steady employee
52 for you? A. Yes.

. . . . . .

Q. Did you have to rehire him every time you had a job? A. Well, no, we shipped them from one job to the other. When one job would run out we would transfer them to another job.

Q. In Mr. Ticer's case, you didn't have to contact the Union whenever you put him to work? A. Well, Mr. Ticer was the foreman down at Quantico, a sub-foreman, and naturally when we appoint a man we have to get the foreman from the Union and use a certain man as a foreman.

Q. When do you do that? A. When the job starts.

Q. Every time a new job starts? A. Yes. We have to get a foreman from the Union and use that man as foreman.

Q. Did the procedure in that with Mr. Ticer differ any from that of other employees you hired? A. No, sir; I don't think so.

. . . . . .

53 Q. Did you have a standing rule with the Union about Mr. Ticer acting as sub-foreman or foreman on your various jobs, or did you have to make a request on each occasion? A. No. When Mr. Ticer was put down there as sub-foreman we had a request, we put in a request to the Union to use him as foreman or sub-foreman, as the case may be.

Q. And that goes for every job that your had that Mr. Ticer worked for you? A. When he was foreman, but he wasn't always foreman.

Q. How long had he been working at Quantico at this particular job before the date of this injury? A. Mr. Ticer had been working there three to four years.

Q. He had worked at Quantico for three or four years prior to the date of his injury? A. Yes, sir.

Q. Steadily? A. Yes, sir.

* * * * * * * * *

54 Q. When you assigned Mr. Ticer to the job in Quantico, from the time that you assigned him to the job, had you transferred or changed his work to any other locality? A. No. He worked there for the past three years or more.

Q. Without any change? A. Yes, sir.

Q. He went there every day for the past three or
55 four years? A. Yes, sir.

Q. Did you have any job in the District of Columbia at that time? A. Yes, sir.

Q. Was there any connection between the job in Quantico with that of your work in the District of Columbia? A. No.

* * * * * * * * *

Q. I understand that Mr. Ticer was working on one job for three or four years time; is that right? A. Not on one job for three or four years.

Q. Various jobs in Quantico but in Quantico? A. Yes, sir; they are all on the site.

* * * * * * * * *

56 Q. Under what circumstances did you provide transportation for employees at any time? A. We had several of our own cars, that has been several years ago, and we had a station wagon, and we had another passenger car.

Q. How do you know how much to pay the men in addition to their regular salary? A. We contact the local Union.

Q. How do you do that? A. By telephone.

Q. What would you inquire about? A. We would ask them how much the rate would be, the expenses, the car fare for bus service or train, or whatever it may be, and it was determined that way.

Q. Did you ever question the amount fixed by the Union with respect to that charge? A. With respect to Quantico, no, because that was a general practice to pay that amount of money.

Q. For work done in Quantico? A. Yes.

Q. What is your understanding as what that payment represented? A. That was a reimbursement of their expenses, travelling.

57

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Q. What kind of place do you maintain in the District of Columbia—merely an office? A. Yes, we have an office, supply rooms, estimating rooms.

Q. What do you mean by supply rooms? A. Where we keep our materials and supplies.

* * * * * * * * * *

58 Q. Where do you furnish supplies for a job in Quantico? A. We buy directly from the factories. We have some supplies, but the majority of our stuff is bought out of town and shipped in.

* * * * * * * * * *

59. Q. Was it necessary for a new contract of employment to arise between the job at the Washington Navy Yard and the job at Quantico? Do you know? A. About Mr. Ticer?

Q. Yes. A. No.

Q. No new contract of employment? A. No.

Q. Now, with respect to the supplies for the Quantico job, in answer to the Commissioner's question you stated the majority of your supplies were shipped from the factory? A. That is right.

Q. Isn't it true that some of the supplies came from your supply house here in the District of Columbia? A. That is correct.

* * * * * * * * * *

61 Q. Has he been a foreman ever since he went to Quantico, a sub-foreman? A. I should say practically all the time.

Q. Is that why you moved him down there because you wanted him as a sub-foreman? A. That is right.

By Mr. Carpenter:

Q. When he went to Quantico pursuant to your order, did he immediately become a sub-foreman? A. Not immediately.

Q. You made him a sub-foreman after he had commenced work there? A. That is right.

. . . . . .

62 **Charles Joseph Sullivan.**

. . . . . .

Q. For whom do you work, Mr. Sullivan? A. For the E. C. Ernst Company, Incorporated.

Q. What is your position there? A. I am employed as a foreman.

Q. How long have you held that position? A. Practically since I was first employed by the E. C. Ernst Company. There have been times when I worked as a mechanic.

63 Q. Upon what particular job are your now employed? A. I am working in Quantico. I have supervision over several jobs there.

Q. How long have you been there? A. I have been in Quantico since September 22, 1940.

. . . . . .

Q. How long had Clarence worked at Quantico uninterruptedly prior to his death? A. He went to Quantico in November of 1940.

. . . . . .

Q. Where? Just prior to the time that you went to Quantico? A. I worked with Mr. Ticer on the Administration Building at the Washington Navy Yard.

Q. Was that the work site at which he was engaged just prior to the time that he went to Quantico? A. That is right.

Q. Was there any lapse between Mr. Ticer's leaving the Navy Yard job and his reporting to Quantico for work? A. No.

Q. Where were you hired, Mr. Sullivan, by the E. C. Ernst Company? At what place? A. At their office on Fourteenth Street.

Q. Do you know where Clarence was hired? A. I don't know exactly. I mean, I could not say where.

Q. Are any of the employees of the E. C. Ernst Company ever hired at the job in Quantico? A. No, sir.

Q. But all those men are hired elsewhere? A. Elsewhere; they are sent from our Washington office.

Q. They are sent from the Washington office? A. That is right.

. . . . . .

Q. Do you receive any additional payment from E. C. Ernst, Incorporated, over and above your wages which they pay you? A. Yes.

Q. You do? A. Yes.

Q. How much is that? A. Two dollars per day.

Q. What do you use that money for? A. I use it to pay my expenses for travelling back and forth in my car.

. . . . . .

By Mr. Phelan:

Q. As I understand it, Mr. Sullivan, there was a car pool of the employees down there in December of 1943; is that right? A. That is correct.

Q. Where did this pool meet? Where did they start from? A. At Roaches Run on the Mount Vernon Boulevard.

Q. Where is that with reference to Alexandria? A. It is—I could not tell you. It is at the Municipal Air Port; it is close to the Municipal Air Port.

. . . . . .

Q. How would you get from your house to Roaches Run? A. I would drive over in my car.

. . . . . .

Q. How would Ticer get there? He would do the same thing.

. . . . . .

Q. They would bring their own cars over to Roaches Run? Park their cars, and then all get into one car? A. Yes.

Q. And go on from there to Quantico; that is right? A. That is right.

Q. Now, on the way back the cars that brought you down would go as far as Roaches Run and then you would stop and get into your own cars; is that right? A. That is correct.

. . . . . .

67 The Deputy Commissioner: For my own information, where did this accident happen, before getting to Roaches Run?

Mr. Phelan: Yes, sir.

Mr. Carpenter: On the way back.

. . . . . .

Q. How did you folks go? Through Alexandria? A. We would come to Alexandria and take Route 1, which is the Washington-Richmond Highway.

The Mount Vernon Boulevard goes directly to Mount Vernon and that is a little further.

Q. There wasn't anyone to tell you how you should go? A. Oh, no.

Q. You worked that out for yourself? A. Yes, sir.

Q. Was there any control exercised by the Ernst
68 Company over the method by which you were to get to Quantico? A. None whatever.

Q. Were you given the privilege of living down there if you wanted, as well as coming back and forth? A. It was entirely optional on the part of the men, whether they lived there or drove back and forth.

. . . . . .

Q. By the way, where were the men paid? Were they paid here in Washington or at Quantico? A. They were paid in Quantico.

However, Mr. Acker or Mr. Doe would drive to Quantico from Washington and pay the men off.

. . . . . .

Q. Would that pay include the two dollars a day transportation? A. Yes, sir; that was included.

. . . . . .

70 Q. Is there any bus service available between Washington and Quantico proper? I don't mean Triangle; I mean Quantico proper. A. Not to my knowledge.

. . . . . .

71 Q. What would happen, Mr. Sullivan, if a man were ill upon the day that he should be paid, or possibly take a day off, or be off for any other reason? Would he then go to the office in Washington to receive his money? A. As a rule, I would take the money, take charge of the money until he came in the next day.

However, there have been times, if it was raining and it was also pay day, that I would call the office and they would hold his money at the Washington office, and he would then come directly to Washington, to the Washington office to receive his money.

Q. So that sometimes men actually did come to the Washington office to be paid? A. Yes, sir.

. . . . . .

72 Q. Whose car was used, Mr. Sullivan, in making the trip from Roaches Run to Quantico and from Quantico back to Roaches Run? A. Whose car?

Q. Yes. A. We alternated. First one man would use his car—I would use my car one day and we rotated, each one of us would drive.

Q. How many employees were in that car pool? A. Five.

. . . . . .

74 Q. Do you know the circumstances under which Mr. Ticer went to Quantico? A. Well, all I knew was that I needed men. I always when I need men I call Mr. Doe, and he sends men down, whoever I require.

Q. You send for the particular individual? A. No; I don't ask for a particular individual. I just tell Mr. Doe that I need so many men.

Q. Are any of the mechanics regularly employed by Mr. Ernst? A. Well, yes.

Q. In other words, do I understand that you don't have to go to the Union for men for all jobs? A. By regularly employed, as long as a man is regularly employed it is not necessary to go to the Union since he is regularly employed and working every day.

He can go from one job to the other as long as there is no lapse in between or as long as the contractor does not lay him off, or dismiss him.

Q. Was Mr. Ticer, in your opinion, regularly employed by E. C. Ernst, Incorporated? A. Yes, sir.

. . . . . .

75 By the Deputy Commissioner:

Q. Without the use of an automobile, how could you have gotten from the District of Columbia to the job at Quantico? A. Well, I suppose you could go to the Union Station and get a train, or you could get a bus as far as Triangle and walk the three or four miles from the highway into Quantico, the town proper.

Q. How about by train? Would you have any distance to travel after getting off the train to the job? A. Yes. You would have to walk to the job on the Post, depending on where that particular job was located. It could be as much as two miles.

. . . . . .

77 Q. The two dollars per day for transportation, that applied to everybody, mechanics as well as foremen

and regardless of rate of pay; is that correct? A. That is correct.

. . . . . .

By Mr. Carpenter:

Q. Mr. Sullivan, you testified that in December of 1943 there were approximately ten men employed at Quantico? A. As near as I can recall.

Q. That is ten men working during that month approximately? A. Yes; sir.

Q. Do you know where these men lived and where their homes were? A. Well, all of these men, to the best of my knowledge, lived either in the District of Columbia or close by the District, or in Arlington or Fairfax County.

I think one lived in a trailer camp on the other side
78 of Alexandria.

Q. And they commuted between Quantico and their homes? A. Yes; they all commuted in their cars.

. . . . . .

Q. What are the hours of employment? A. We are allowed to work eight hours between seven-thirty and four-thirty, and the seasons of the year has something to do with that. We have been working from eight to four-thirty, but generally speaking, we work from seven-thirty to four.

. . . . . .

Q. And the basic pay began when you arrived on the job? A. That is correct.

Q. And when you left the job? A. That is right.

Q. That is, it terminated when you left the job? A. That is right.

By Mr. Phelan:

Q. This one man who lived in a trailer camp on the other side of Alexandria, he got two dollars the same as anyone else? A. That is right.

By the Deputy Commissioner:

Q. Did he live there before he began to work for Ernst or did he move down there because of the Employ-
79 ment? A. He lived there for several years.

He worked at the Pentagon Building and still lived at the trailer camp.

. . . . . .

Mrs. Virginia Catherine Ticer.

. . . . . .

80 Q. You are the widow of Clarence Hastings Ticer, Jr.? A. Yes, sir.

Q. How long did you live with Clarence Hastings Ticer, Jr., prior to his death? A. A year and a half.

Q. At what address? A. 2505 Thirteenth Street, Northwest.

Q. During the time that you lived with Clarence Hastings Ticer, Jr., was it his habit to come home every night from his work in Quantico? A. Yes, sir.

Q. Every night? A. Yes, sir.

Q. How long have you been a resident of the District of Columbia? A. Yes, sir; about seventeen years.

Q. Seventeen years? A. Yes, sir.

Q. You are still a resident of the District of Columbia? A. Yes, sir.

. . . . . .

Q. Just one question, Mrs. Ticer.

Where did Mr. Ticer live before he moved to 2505
81 Thirteenth Street? A. He lived on 1326 Longfellow Street.

. . . . . .

Q. How long did he live there, if you know? A. I would say for a year or more.

Q. He used to live in Virginia? A. Yes, he did.

. . . . . .

82 Q. How long have you known him? A. About three or four years.

Q. Where was he living when you first met him—in Virginia or Washington? A. In Virginia then.

. . . . . .

Q. So that somewhere within the last three or four years he was a resident of Virginia? A. That is right.

. . . . . .

83 **James G. Farley.**

. . . . . .

By Mr. Phelan:

. . . . . .

Q. Mr. Farley, did you at my request call up the bus line to ascertain the round trip bus fare to Quantico, Virginia? A. Yes, I did; yes, sir.

Q. What did you do? What response did you get?—A. Well, as I understand it, from the bus terminal down here at Twelfth Street and New York Avenue, to the best of my recollection, the number is National 8000, and I phoned there and I asked the cost for travel by bus to Quantico, Virginia, and in reply to that question, I was informed that it was a dollar and sixty cents.

Q. For the round trip? A. Yes, sir.

. . . . . .

Q. Mr. Farley, you are employed by the Liberty Mutual Insurance Company? A. That is correct.

. . . . . .

84 Q. I have one question.

Do you know whether, as a matter of fact, of your own knowledge, Mr. Farley, whether or not a bus actually does run from Washington to Quantico proper? A. No, I don't of my own knowledge. I have never made any trips down there by bus.

Q. The information that you secured from the office might have related, might it not, to the fare, the round trip fare between Washington and gates to Quantico? A. I just asked the fare to Quantico and that is what they told me.

Q. It might have been to the gates of Quantico? A. I don't know what it might have been. I just asked the fare to Quantico and they told me a dollar and sixty cents. I don't know what it might have been.

Q. Are you familiar with the grounds at Quantico? A. No; I have a vague recollection of Quantico, that is down that way.

. . . . . .

108 **E. R. Leister.**

. . . . . .

109. Q. Will you please state your name and address? A. E. R. Leister, 339 North Fillmore, Arlington, Virginia.

Q. Mr. Leister, are you an employee of E. C. Ernst? A. I am.

Q. For how long have you been such an employee? A. Between eight and ten years.

Q. Were you an employee of E. C. Ernst, Incorporated, on December 13, 1943? A. Yes, I was.

Q. At what place were you working on that date? A. Quantico, Virginia, Marine Barracks.

. . . . . .

Q. On the morning of December 13, 1943, how did you get to Quantico, Virginia? A. We met at Roaches
110 Run at the parking lot, and we all got into Ticer's car at that point and travelled from there to Quantico.

Q. That is Mr. Clarence Ticer? A. That's right.

Q. It was your habit to commute between the job and your home? A. That's right.

Q. Were you paid any expense money by E. C. Ernst for that travel? A. We were paid our transportation.

Mr. Phelan: I object to that as being a conclusion. I think all we are interested in here are the facts.

. . . . . .

Q. Did you work the full day of December 13th? A. We did.

Q. At the Quantico job? A. At the Quantico Barracks.

. . . . . .

111 Q. What time did you quit that day? A. The same time, 4:30.

Q. What did you do immediately after quitting the job at the close of the day?

. . . . . .

A. We just finished up and got in Ticer's car and started home.

Q. What route did you follow on the way back to Washington that day? A. The same route, No. 1 Highway.

112 Q. State whether or not that is the most logical route to follow from Quantico to Washington? A. That's right.

Q. Were any stops made for the convenience of Ticer or any of those riding in the car that day? A. None whatsoever.

Q. As you proceeded up the highway you approached Fort Belvoir, Virginia, which is located on Route No. 1? A. That's right.

Q. What happened as you approached that place? A. We come in just beyond the viaduct just approaching Belvoir. Traffic was quite heavy, and this truck was coming down going towards Richmond and we were going toward Washington, and I distinctly saw something come from the rear wheel of this big heavy truck and, to the best of my recollection, there was a big heavy canvas top, and as this object came away from the rear of the truck it sort of followed the truck, and we were going in the opposite direction, and there was a slight curve and incline, and I saw this object coming up about six or eight feet from the ground.

and I saw it coming and hollered "Duck." It was about 25 or 30 feet from us, and I hollered "Duck," and whether Mr. Ticer ducked I couldn't say, and there was a terriffic explosion.

Q. Do you mean a noise? A. A noise, and every-
113 thing went dark in the car, and I raised my head and noticed Ticer had slumped, and I immediately took hold of him and kicked his foot off the gas, and brought it out of traffic, and as soon as I did I turned off the ignition.

Q. Did you ascertain, Mr. Leister, what the object was you saw coming through the air? A. I couldn't at the time. We found it in the car. It landed in the car.

Q. What was it? A. It was a rock three or four inches in diameter.

By the Deputy Commissioner:

Q. Three or four inches in diameter? A. Yes, sir. It was about that big (Indicating), a flat, oval shaped rock that weighed about two pounds, or better.

By Mr. Carpenter:

Q. Two pounds or better? A. Yes, sir, I would say.

Q. How did it gain entrance through the car? A. Through the windshield in front of the driver.

. . . . . .

114 Q. Did the object strike Mr. Ticer? A. Right on the top of the head, right here. (Indicating.)

By the Deputy Commissioner:

Q. Across the left side? A. The left side of the scalp.

Q. Above the hair line? A. Above the hair line, yes; right in here. (Indicating.)

By Mr. Carpenter:

Q. Had it rendered him unconscious? A. Immediately.

. . . . . .

115 Q. Now, Mr. Leister, the day of the accident, that is, December 13, 1943, was the automobile which Mr. Ticer was driving transporting any equipment, tools, or other possessions of the men that might be used in their employment? A. Yes, sir. He was carrying my tools at the time. I was being transferred back to Vint Hills.

Q. You say you had been transferred? A. Yes.

Q. From whom had you received orders? A. From the foreman to go back to Vint Hills to complete the
116 project I had been working on up there.

Q. Was that customary? A. That is customary procedure, yes.

Q. You did not return to the Quantico job then on the morning of December 14th? A. No. It was about a week or ten days before I went back. It was after Mr. Ticer's death and burial that I went back.

Q. On December 14th, then, you went to the Vint Hills job. A. Yes.

Q. You transported your tools down to the Vint Hills job? A. That's right.

Q. Your tools were necessary to your work? A. Absolutely.

Q. You are now working at Quantico? A. At Quantico, yes.

. . . . . .

118 Q. How long since you have worked for them in Washington on a job? A. In Washington? I worked for them just before I went to Quantico two days, and then transferred right back to Quantico. I was at the McLean estate.

Q. When was that at the McLean estate? A. I think about two days before Christmas.

Q. That was finished in 1943? A. In '43.

Q. That project has been built well over a year. A. Not the one in back of T 8, that temporary building, and then they put in what they call a fire house building right in back of that, and I worked on that.

Q. You worked on that two days and then went back to Quantico? A. That's right.

119 Q. Now, tell me what was your practice in going to Quantico. You didn't use your car? A. At that time I didn't use my car. It was up for repair with broken springs, and I had to use other cars.

Q. In other words, when you went down there, if you went with Sullivan you paid Sullivan? A. I paid whoever I went with that day.

Q. And on that day you paid Ticer? A. I paid Ticer that afternoon.

Q. How much did you pay him? A. I paid him a dollar a day.

120 Q. You paid him a dollar a day for the use of the other car? A. Yes, sir.

Q. And that was the understanding, if you weren't using your car you paid the man who was using his car? A. Yes.

Q. And that is the way it worked out? A. That is the way it worked out.

Q. The agreed price among yourselves for the two-way trip was a dollar? A. That's right.

Q. Now, as I understand it, one of the men who was in your group, or at least was employed by the Ernst Company down there at that time, lived south of Alexandria in a trailer camp? A. That's right; Ted Overley lived at the trailer camp right opposite Pendall.

Q. And Overley was there with you at that time? A. Overley was riding with us at the time.

121 Q. Were there any other paying customers in Ticer's car that day? A. I was the only one at the time.

Q. You were the only one at the time? A. If I recall correctly; there may have been Barksdale. I don't know

whether he had his car in the pool at that time, or not. I think Barksdale was a paying customer and later put his car into the pool.

Q. But at that time his car was not in the pool, and he was paying his fare? A. Yes, I think at that time he was a paying customer.

Q. And he would likewise give Ticer, or whatever man was the driver, the dollar for the day he drove? A. That's right.

. . . . . .

122 Q. Now, in your particular case you got your two dollars just the same from the Ernst Company? A. That's right.

Q. And you, in turn, would disburse a part of that two dollars to Mr. Ticer, or whoever else was doing the driving? A. Yes, sir.

Q. Your best impression is that at that time Barksdale was under the same arrangement? A. Yes.

. . . . . .

125 By the Deputy Commissioner:

Q. Mr. Leister, it isn't quite clear to me what the practice was with respect to the pool, the car pool.

126 My understanding is that a group of five, those that you mentioned, were in this pool? A. That's right.

Q. And each one of you perhaps outside of the two who drove to the meeting point, Roaches Run, would drive your own car to this point in the morning? A. That's right.

Q. And then you would all get in one car and drive from Roaches Run to Quantico? A. That's right.

Q. Now, whose car was usually selected to drive from Roaches Run to Quantico? A. We would alternate.

Q. You would alternate? A. As our day would come up.

Q. And when you drove from Roaches Run to Quantico in some one else's car you paid what price? A. No, not when you have your car in the pool.

When you have your car in the pool you just alternate. At this particular time we have four in the pool, and you drive every fourth day, and the other days you ride with the others.

Q. At that particular time your car was not in the pool? A. That's right.

Q. The morning of Decen ber 13th the five of you, you and the other men rode from Roaches Run to Quantico in Ticer's car? A. Not from Roaches Run; four of us from Roaches Run down to Pendall, where we picked up Overley, who waits for us right on the highway, and then to Quantico.

Q. And the same five came home that night? A. That's right.

Q. Of those five how many did you say paid fare? A. I think there was two of us paying at the time, Barksdale and myself.

. . . . . .

Q. You testified, Mr. Leister, that just prior to Christmas, 1943, you worked a couple of days at the McLean estate, I imagine "Friendship?" A. That's right. They call it the McLean estate. It is right on the same grounds. They had this temporary building and they added a new building to that.

Q. Prior to that time had you worked on other jobs in the District of Columbia for the E. C. Ernst Company? A. Yes, sir.

Q. You would be assigned, then, sometimes to jobs within the boundaries of the District? A. Yes, sir, most of my time.

Q. Most of your time, of the time since you have been working with Ernst? A. That's right.

. . . . . .

Mrs. Virginia Ticer.

132 Q. When were you married to Clarence H. Ticer?
A. June 14, 1942.

Q. Where were you married? A. Dillon, South Carolina.

Q. Where did you live immediately subsequent to your marriage to Mr. Ticer? A. At 804 L Street Northeast.

Q. Washington, D. C.? A. Yes.

Q. From the time you lived at that address to the time of your husband's death did you live constantly with him as his wife? A. I did.

Q. In the District of Columbia? A. Yes, sir.

Q. Were you living with him as his wife at the time of his death? A. Yes.

Q. What address? A. 2508 Thirteenth Street Northwest.

138 **Walter C. Doe.**

140 Q. . . . what do you have to do with respect to the local union at the time you are changing a mechanic to sub-foreman? A. We write a letter to the local asking permission to use a certain man as a foreman, and the routine, I believe, is that they have an executive board meeting and approve or disapprove him as a foreman.

Q. Is that a temporary measure or permanent? A. That is for the duration of the job.

Any job that he goes on as a foreman on the job, we have to write and ask permission to use him as such.

Q. In this particular case did you ask the union's approval to change Ticer from a mechanic to the status of a sub-foreman? A. Yes.

142 Q. Mr. Doe, does the E. C. Ernst Company carry unemployment insurance for its employees? A. Do we?

Q. Yes, the E. C. Ernst Company? A. Yes.

Q. Where do you pay those premiums? A. I would have to check that with the bookkeeper.

Q. You pay it in the District of Columbia, don't you? A. In the District of Columbia, yes.

Q. That is the District of Columbia unemployment compensation? A. Yes, sir.

Q. Was Mr. Ticer subject to the orders of the E. C. Ernst Company during the time he was working down at Quantico? A. State that again?

Q. Was he subject to the orders of the E. C. Ernst Company while he was working down at Quantico? A. Yes, sir.

Q. If occasion demanded that you transfer him to another job he would have to be withdrawn by the company?

143 A. We have permission to move them wherever we want.

Q. So that if you had need for him on a job other than at Quantico you had the authority to move him? A. Yes.

III.

EXHIBITS.

Excerpts from Claimant's Exhibit No. 1.

86 AGREEMENT

Made December 2, 1941.

Between the

INSTITUTE OF ELECTRICAL CONTRACTORS

of the

DISTRICT OF COLUMBIA, INC.

and

LOCAL UNION No. 26,

of the

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

Fundamental Principles: This agreement is based upon the following set of fundamental principles, affirmed by the parties hereto:

1. Close contact and a mutually sympathetic interest between employee and employer will develop a better working system which will tend constantly to stimulate production while improving the relationship between employee, employer and the community.

. . . . . .

87 Now therefore, in consideration of the mutual promises and agreements herein contained, the parties hereto agree as follows:

. . . . . .

Rule 2.

(c) Every individual Employer shall carry Workmen's Compensation Insurance and such other insurance as may be required by the laws of the District of Columbia and states within the jurisdiction of Local Union, No. 26, and shall furnish satisfactory proof thereof to the Union.

Rule 3. (a) Eight hours shall constitute a work day between 7:30 a.m. and 4:30 p.m. on Mondays to Fridays, inclusive.

Rule 15. (a) No traveling time shall be paid to workmen for traveling to or from any job in the jurisdiction (to or from any job in the jurisdiction) of the Union when workmen are ordered to report to the job.

(b) Transportation and any necessary expense such as board and lodging shall be furnished for all work outside the District of Columbia.

(c) The Employer shall pay full expenses, including traveling time, on all jobs outside the jurisdiction of the Union.

INSTITUTE OF ELECTRICAL CONTRACTORS OF THE DISTRICT OF COLUMBIA, INC.

Joint Conference Committee.

JOSEPH KIRCHNER.
ROBERT W. McCHESNEY.
A. H. WILSON.
HARRY W. KELLAMS.

LOCAL UNION, No. 26, INTERNATIONAL BROTHERHOOF OF ELECTRICAL WORKERS.

Joint Conference Committee,

JAMES E. BOLAND,
JAMES F. McDONOUGH,
WALTER J. GRIBBIN,
C. F. PRELLER.

Claimant's Exhibit No. 2.

100 1622-24 14th St., N. W.
Washington, D. C., Dec. 16, 1943.

Report of Mr. Walter Doe, Vice President of E. C. Ernst, Inc., 1622-24 14th St., N.W., and also field superintendent.

Approximately ten years ago I hired one Clarence H. Ticer, Jr., at present living at 2505 13th St., N.W., to work for E. C. Ernst as an electrician. I hired Mr. Ticer through the Electricians Union, Local #26, located at 403 11th St., N. W., Wash., D. C. Mr. Ticer was hired here in the District of Columbia, but he was to work, and does work, wherever he is needed on any of our jobs. In addition to his salary he also receives transportation money whenever his work takes him outside the District of Columbia. This transportation money is paid as the result of an agreement reached with the Electricians Union. At present Ticer has been working for approximately the past two years in Quantico, Virginia on our jobs. He has been working as a sub-foreman. He received ($2.00) Two dollars per day transportation money which is equivalent to round trip bus fare to and from Quantico, Virginia. He was not under any orders from me or E. C. Ernst, Inc., as to how he was to go to and from our job in Quantico, nor were any of the men. The men could go by bus, train, private car or any way they wished, provided they got to work. Ticer and the men were not under any order or request as to how they should

101 reach the job in Quantico or spend their daily transportation money. We gave no orders as to car pools, etc. Ticer was not required to furnish transportation for men on the job in going to and from the job. Nor was he required by us to carry tools or material to and from Quantico, Virginia. E. C. Ernst, Inc. did not furnish transportation by any vehicle. On December 13th, 1943, at approximately 5 p.m. while on his way home to Washington, D. C., Ticer was injured. While passing Fort Belvoir on U. S. #1, a truck going in the opposite direction may have struck a stone in the road causing it to fly through the air, through the windshield of Ticer's car, which he was driving, and striking Ticer on the head injuring him. At the time Ticer was taking (4) four fellow employees back to Washington. He was carrying these men voluntarily as a result of private arrangements with them and not upon the orders of E. C. Ernst, Inc. He was not on any errand for E. C. Ernst, Inc., and was not carrying company tools or equipment. I have read the above statement and is correct to my knowledge.

(Signed) WALTER C. DOE, Vice Pres.

102 **Carrier's Exhibit A.**

Report of Mr. Charles Joseph Sullivan, Franklin Park, Falls Church, Virginia, employed as job superintendent by E. C. Ernst Co. of 1622-24 14th Street, N. W., Washington, D. C., on the E. C. Ernst Co. Quantico, Virginia Marine Barracks job, where E. C. Ernst Co. has been working for approximately the past four (4) years. Clarence Ticer, Jr., of Washington, D. C., worked under me as a sub-foreman. On Monday, December 13, 1943, at about 5:15 P.M., while going home from work, Clarence Ticer was injured. I did not see Ticer injured, but understand from the men who were riding in his car with him at the time that a stone crashed through the windshield and struck Ticer full on the head. A Mr. Earl Leister, who was seated beside Ticer, managed to grab the wheel with

one hand and steered the car to the side of the road. This accident to Ticer happened, so I understand, on U. S. Route #1 in front of Fort Belvoir, Virginia, and while Ticer was giving four (4) fellow employees of E. C. Ernst a lift home. Ticer is not required by E. C. Ernst Co. to transport fellow employees to and from work at Quantico, and such was voluntary on his part. The men usually formed car pools among themselves to arrange transportation. We received $2.00 per day transportation allowance to cover transportation to and from the Quantico job. E. C. Ernst Co. gave us this amount through agreement with the electricians' union—I.B.E.W. Local #26. We were not required
103 to spend this daily transportation allowance in any particular way and it was left up to each man as to how he wanted to get to the job. Usually we—myself included, traveled to work daily in one or another's cars. We met every morning at Roachs Run on U. S. Memorial Boulevard and we would all park our cars and then go from there to the job in one car—or two if the number of men was large enough. We had no fixed schedule as to taking turns, and were not bound by any schedule but usually everyone took their turn so that no one had to do more driving than anyone else. As time went on Ticer and I formed the habit of driving in the other's place should one of us be absent. I was foreman, and he was sub-foreman. There were no definite arrangements between us about this but we had become accustomed to taking each other's place automatically when one was supposed to drive and did not show up at Roachs Run, or could not make it. Now, on Monday, December 13, 1943, it was my turn to drive, but Ticer drove in my place. I did not tell him I was not coming, nor did I ask him to drive in my place. On the morning of December 13, 1943, I was ill and did not report at Roachs Run, and Ticer drove in my place. On Monday, December 13, 1943, while driving home, Earl Leister brought his tools with him and Ticer carried them in his car. I did not require Ticer to carry tools or materials in his car and did

not order him to do so on December 13, 1943, or any time.

As a matter of fact, union rules forbid the men carry-
104 ing tools and materials. I never ordered Ticer to drive in my place if I could not make it, and did not do so on or prior to December 13, 1943. I have read the above three pages and they are true to the best of my belief and knowledge.

(SGD) CHARLES J. SULLIVAN

(SGD) (witness to signature) MARY M. SULLIVAN.

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58 Tuesday, February 5th, A. D., 1946

The Court met pursuant to adjournment. Present: Honorable D. Lawrence Groner, Chief Justice, Harold M. Stephens, Henry W. Edgerton, Bennett Champ Clark, Wilbur K. Miller, and E. Barrett Prettyman, Associate Justices.

Before Honorable D. Lawrence Groner, Chief Justice Bennett Champ Clark, and Wilbur K. Miller, Associate Justices.

* * * * * *

No. 9086, January Term, 1946

Liberty Mutual Insurance Company et al., appellants

vs.

Frank A. Cardillo, Deputy Commissioner, U. S. Employees' Compensation Commission &c., et al., appellees

Argument commenced by Mr. Arthur J. Phelan, attorney for appellants continued by Mr. Ward E. Boote, attorney for appellee, and continued by Mr. Arthur J. Phelan.

* * * * * *

59 United States Court of Appeals, District of Columbia

No. 9086

Liberty Mutual Insurance Company, and E. C. Ernst, Inc., appellants

v.

Frank A. Cardillo, Deputy Commissioner, U. S. Employees' Compensation Commission for the District of Columbia, and Virginia C. Ticer, appellees.

Appeal from the District Court of the United States for the District of Columbia

Argued February 5, 1946—Decided April 8, 1946

Mr. Arthur J. Phelan, with whom Mr. Edward B. Williams was on the brief, for appellants.

Mr. Ward E. Boote, Chief Counsel, U. S. Employees' Compensation Commission, with whom Messrs. Edward M. Curran, U. S. Attorney, and Daniel B. Maher, Assistant U. S. Attorney, were on the brief, for appellee Frank A. Cardillo. Mr. Homer S. Carpenter appeared on the brief as attorney for appellee Virginia C. Ticer.

Before GRONER, C. J., and CLARK and WILBUR K. MILLER, JJ.

WILBUR K. MILLER, J.: This appeal brings before us for review a judgment of the District Court of the United States for the District of Columbia which affirmed a compensation award under the Longshoremen's Act.[1]

The evidence clearly showed that Walter H. Ticer had been employed for some ten years before his death on December 17, 1943, by E. C. Ernst, Inc., a corporation engaged in the electrical construction business. The Ernst firm was incorporated in, had its principal office in, and did much of its construction work in, the District of Columbia. It also had substantial contracts elsewhere, including one at the U. S. Marine Base at Quantico, Virginia, which had been in progress for several years. Ticer, who lived in the District of Columbia, was assigned with other employees to the Quantico job in 1940. He did all his work and received his pay in Quantico.

It was the custom of those employees who lived in or near Washington to drive their personally owned automobiles
60 to a central starting point each morning. There four or five would get in one automobile and proceed to Quantico, leaving the other cars until they returned that evening, thus economizing on gasoline and oil and minimizing depreciation on the automobiles. Any employee who did not contribute a car to the "pool" paid $1.00 for the round trip to him whose car was being driven to Quantico.

On December 13, 1943, it was Ticer's turn to drive his car the entire distance. He was accompanied by four co-workers, two members of the car pool and two who paid him $1.00 each for the day's transportation. As Ticer drove his car homeward that evening and was approaching Fort Belvoir, Virginia, a truck passing in the opposite direction somehow picked up a stone from the surface of the highway. The stone was hurled through the windshield and struck Ticer on the head. From the injury so sustained, he died three days later.

Compensation for the death having been awarded to Ticer's widow by the deputy commissioner, E. C. Ernst, Inc., and Liberty Mutual Insurance Company, its compensation insurance carrier, sued to vacate the award. The District Court granted a motion to dismiss, and the employer and its insurance carrier appeal.

The position of the appellants is (1) that the conclusion of the deputy commissioner that the injury arose out of and in the course of the employment was contrary to the law and to the evidence, and

[1] Longshoremen's and Harbor Workers' Compensation Act of March 4, 1927, 44 Stat. 1424, U. S. C. Title 33, ch. 18, § 901 and following, as made applicable to the District of Columbia, 45 Stat. 600, Title 36, § 501, District of Columbia Code, 1940

(2) that the deputy commissioner did not have jurisdiction to make an award.

The general rule is that injuries sustained by employees when going to or returning from their regular place of work are not deemed to arise out of and in the course of employment. Ordinarily, the hazards they encounter during those journeys are not incident to the employer's business.[2] This is not an inflexible rule, however, and exceptions to it may arise either through the employer's agreement to that effect, or from the circumstances of the case from which appropriate authority implies an agreement on the part of the employer to compensate for injuries received in going to and from work.

The general rule stated in the Voehl case was recognized by this court in *Ward* v. *Cardillo*,[3] and a statement of four exceptions thereto was approved. Those exceptions are:

(1) where the employer requires the employee to travel on the highways;

(2) where the employer contracts to and does furnish transportation to and from work;

(3) where the employee is subject to emergency calls, as in the case of firemen;

(4) where the employee uses the highway to do something incidental to his employment, with the knowledge and approval of the employer.

The appellees attempt to justify the award in this case by saying that it falls within the second exception, in that E. C. Ernst, Inc., contracted to and did furnish transportation to and from work.

61 As a member of the Institute of Electrical Contractors of the District of Columbia, E. C. Ernst, Inc., was bound by the terms of a contract between that institute and a local union of electrical workers, of which Ticer was a member. The pertinent paragraphs of the contract between the institute and the union are shown in the margin.[4] As a matter of practice, however, Rule 15 (b) was not followed by the parties with respect to the work at Quantico. By an oral agreement subsequent to the formal written contract there was substituted for the obligation of the employer to transport employees engaged in work outside the District of Columbia an arrangement by which Ernst paid each employee the flat sum of $2.00 per day as transportation expense.

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[2] *Voehl* v. *Indemnity Insurance Co.*, 288 U. S. 162, 169.

[3] 135 F. (2d) 280, 77 App. D. C. 343.

[4] "Rule 15. (a) No traveling time shall be paid to workmen for traveling to or from any job in the jurisdiction, (to or from any job in the jurisdiction) of the Union where workmen are ordered to report to the job.

"(b) Transportation and any necessary expense such as board and lodging shall be furnished for all work outside the District of Columbia.

"(c) The Employer shall pay full expenses, including traveling time, on all jobs outside the jurisdiction of the Union."

This applied whether the employee lived in the District of Columbia, in Quantico, or at an intermediate point. E. C. Ernst, Inc., did not furnish vehicles for transportation, did not contract with others to transport its employees, did not furnish gasoline or oil, and did not specify the means or route by which employees should reach the work site at Quantico. Each employee was entirely free to select the method by which he would reach Quantico each day and by which he would return to his home at its close.

The right to compensation under the act depends, of course, upon the existence of the relation of master and servant at the time of the injury. The liability is based, the Supreme Court has said, "not upon any act or omission of the employer, but upon the existence of the relationship which the employee bears to the employment because of and in the course of which he has been injured."[5] Continuing, the Supreme Court said, "And this is not to impose liability upon one person for an injury sustained by another with which the former has no connection; but it is to say that it is enough if there be a causal connection between the injury and the business in which he employs the latter—a connection substantially contributory though it need not be the sole or proximate cause. * * *".

No exact rule can be formulated from the decisions beyond the broad generality of the Voehl case that ordinarily injuries received while going to and from work are not compensable, and the category of exception set out in Ward v. Cardillo, supra. The reason for the general rule expressed in the Voehl opinion is that during the journeys to and from work, usually the master and servant relation does not exist. During the relation, the employee must go where he is told to go, must do what he is told to do, when and where he is instructed to do it. He is following, not his will, but the will of his employer; so, if he is hurt while going or doing as he has been instructed, his injury is compensable. But when the relation ends, he is again a free agent, choosing his own way, and the time and place of his own acts; if injured, there can be no compensation because there is no causal connection between the injury and the employment.

62 Throughout practically all the decisions we have examined, including those cited by the appellees, runs the thread of the employer's control over the employee as the distinguishing characteristic which indicates the existence of the relation of master and servant. For example, an employee is deemed to be in the course of his employment while going to or from his place of work by the only practicable route of immediate ingress and egress.[6] Obviously, it is so held because the location of the

[5] Cudahy Co. v. Parramore, 263 U. S. 418.
[6] Cudahy Packing Co. v. Parramore, 263 U. S. 418; Erie R. R. Co. v. Winfield, 244 U. S. 170; T. J. Moss Tie Co. v. Tanner, 44 F. (2d) 928.

employer's plant forces the employee to use a single way of ingress and egress, and so the employer's control during its use is implied.

The difference between the cases so holding and the present case is manifest. Here the control of the employer over the acts and movements of the employee ended with the close of the work day at Quantico. So the master and servant relation ended then.

In our view, the fact that by contract the employer paid Tice $2.00 per day in addition to his earnings, found by the deputy commissioner to be "in lieu of the employer's supplying transportation," does not take the case out of the general rule of the Voehl case; on the contrary, the amendment of the original contract concerning the furnishing of transportation by the employer took this situation out of the scope of the second exception mentioned in Ward v. Cardillo and placed it within the general rule. As we have said, a new contract was made by the terms of which money was to be paid in lieu of furnishing actual transportation. Under that arrangement, the employee became, at the close of the day's work, entirely free of his employer's control. The relation of master and servant terminated as the work-day ended, and thereafter the employee assumed his own risk in subjecting himself to the hazards of the highway. Our opinion is that the lower court erred in sustaining the motion to dismiss. This view makes it unnecessary to consider the question of jurisdiction.

Reversed.

Judge Groner is of opinion the decision of the lower court was correct and should be affirmed.

63 United States Court of Appeals for the District of Columbia

No. 9086—April Term, 1946

LIBERTY MUTUAL INSURANCE COMPANY, A CORPORATION, ET AL., APPELLANTS

v.

FRANK A. CARDILLO, DEPUTY COMMISSIONER, U. S. EMPLOYEES' COMPENSATION COMMISSION, ET AL., APPELLEES

Appeal from the District Court of the United States for the District of Columbia

Before GRONER, C. J., and CLARK, and WILBUR K. MILLER, JJ.

United States Court of Appeals for the District of Columbia. Filed Apr. 8, 1946. Joseph W. Stewart, Clerk.

Judgment

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Columbia, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from in this cause be, and the same is hereby, reversed with costs against appellee Ticer, and that this cause be, and it is hereby, remanded to the said District Court for further proceedings not inconsistent with the opinion of this Court.

Per Mr. Justice WILBUR K. MILLER.

Dated April 8, 1946.

Mr. Chief Justice Groner is of opinion the decision of the lower court was correct and should be affirmed.

United States Court of Appeals for the District of Columbia

No. 9086

LIBERTY MUTUAL INSURANCE COMPANY AND E. C. ERNST, INC., APPELLANTS

v.

FRANK A. CARDILLO, DEPUTY COMMISSIONER, U. S. EMPLOYEES' COMPENSATION COMMISSION FOR THE DISTRICT OF COLUMBIA, AND VIRGINIA C. TICER, APPELLEES

United States Court of Appeals for the District of Columbia. Filed June 13, 1946. Joseph W. Stewart, Clerk.

64 *Designation of record*

The Clerk will please prepare a certified transcript of record for use on petition to the Supreme Court of the United States for writ of certiorari in the above-entitled cause, and include therein the following:

1. Joint Appendix to appellant's brief.
2. Minute entry of argument.
3. Opinion.
4. Judgment.
5. This designation.
6. Clerk's certificate.

(S) J. Howard McGrath,
J. HOWARD MCGRATH,
Solicitor General.

Service of copy of the above designation of record in the above-entitled case is hereby acknowledged this 13th day of June 1946.

(S) ARTHUR J. PHELAN,
Of counsel for Appellants.

United States Court of Appeals for the District of Columbia

I, Joseph W. Stewart, Clerk of the United States Court of Appeals for the District of Columbia, hereby certify that the foregoing pages numbered from 1 to 64, both inclusive, constitute a true copy of the joint appendix to the briefs of the parties and the proceedings of the said Court of Appeals as designated by counsel for appellees in the case of: Liberty Mutual Insurance Company and E. C. Ernst, Inc., Appellants vs. Frank A. Cardillo, Deputy Commissioner, U. S. Employees' Compensation Commission for the District of Columbia, and Virginia C. Ticer, Appellees, No. 9086, April Term, 1946, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this twenty-fourth day of June A. D. 1946.

[SEAL] (S) JOSEPH W. STEWART,
Clerk of the United States Court of Appeals for the District of Columbia.

65 In the Supreme Court of the United States

October Term, 1946

No. —

FRANK A. CARDILLO, DEPUTY COMMISSIONER, U. S. EMPLOYEES' COMPENSATION COMMISSION FOR THE DISTRICT OF COLUMBIA, AND VIRGINIA C. TICER, PETITIONERS

v.

LIBERTY MUTUAL INSURANCE COMPANY AND E. C. ERNST, INC., RESPONDENTS.

Stipulation

Subject to this Court's approval, it is hereby stipulated and agreed by and between counsel for the respective parties to the above-entitled case that:

1. For the purpose of the petition for a writ of certiorari and, in the event the petition be granted, for the purpose of hearing and

determining the case on the merits, the printed record shall consist of the following:

a. Joint Appendix to appellants' brief.

b. The proceedings had before the United States Court of Appeals for the District of Columbia as set forth in the Designation of Record filed by the Petitioners.

2. Petitioners will cause the Clerk of the United States Court of Appeals for the District of Columbia to file with the Clerk of the Supreme Court the entire transcript of record in the Court of Appeals for the District of Columbia, and any of the parties may refer in their briefs and arguments to said transcript of record, including any part which has not been printed.

J. Howard McGrath,
J. Howard McGrath,
Solicitor General.

June 13, 1946.

Arthur J. Phelan,
Attorney for Respondents.

June 13, 1946.

66 Supreme Court of the United States

Order allowing certiorari

Filed October 14, 1946

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

U. S. GOVERNMENT PRINTING OFFICE: 1946